

# **Plaintiffs' Exhibit 100**

Contract ID: 351980

### Upfront Addendum

This Upfront Addendum (“**Addendum**”) is entered into by Customer and Google. This Addendum is an addendum to the Advertising Program Terms for Google Ads that are in effect between Google and Customer over the Term or, if no such terms are in effect, the standard Advertising Program Terms for Google Ads located at <http://www.google.com/ads/terms> (as applicable, the “**Terms and Conditions**”), which are hereby incorporated by reference. This Addendum, the Terms and Conditions, and each applicable IO (collectively, the “**Upfront Agreements**”) govern participation in Google's Upfront Program (“**Upfront Program**”) by Customer, on behalf of Advertiser. If Customer is participating in the Upfront Program on its own behalf, Customer is deemed both Customer and Advertiser. Any capitalized terms not defined in this Addendum have the meanings assigned to them in the Terms and Conditions. With respect to Google, as may be applicable, all rights and obligations hereunder with respect to Customer in North America and South America shall be that of Google LLC, all rights and obligations hereunder with respect to Customer in Asia shall be that of Google Asia Pacific Pte. Ltd., and all rights and obligations hereunder with respect to Customer in all other territories shall be that of Google Ireland Limited.

Customer and Google agree to the following:

**1. Definitions.** In this Addendum, the following definitions apply.

- (a) “**Advertiser**” means United States Department of Veterans Affairs, and such Advertiser's Affiliates that are recognized as such (and linked to such Advertiser) in Google's financial reporting systems.
- (b) “**Added Value Use Period**” means the period beginning the first day of the month after the later of (i) the start of the Program Period and (ii) the Effective Date, and ending 4 months after the end of the Program Period.
- (c) “**Affiliate**” means, with respect to a party, an entity that directly or indirectly controls, is controlled by or is under common control with such party.
- (d) “**Authorized Buyer**” means the online marketplace for connecting buyers and sellers of ads provided by Google or a Google Affiliate currently known as “Authorized Buyers”, and any successor services.
- (e) “**Customer**” means the customer executing this Addendum.
- (f) “**Customer Ad Spend**” means, subject to the exclusions below, the amount reflected in Google's financial reporting systems by adding together: (i) fees that are paid or payable by Advertiser, Customer and/or Participating Company on behalf of Advertiser for Display Ads on YouTube and GDA pursuant to an IO; (ii) Display & Video 360 Spend; (iii) fees that are paid or payable by Advertiser, Customer and/or Participating Company

on behalf of Advertiser for Ads on Waze targeted to the Territory or any part thereof; and (iv) fees that are paid or payable by Advertiser, Customer and/or Participating Company on behalf of Advertiser for YouTube BrandConnect (formerly known as "FameBit") goods and services during the Program Period. Customer Ad Spend will only include fees for Display Ads that are served by Google during the Program Period. Customer Ad Spend does not include fees that are paid or payable by Advertiser, Customer and/or Participating Company on behalf of Advertiser for: (1) Display & Video 360 Third Party Exchange Spend other than open auction and private auction spend; (2) partner sold Display Ads via programmatic guaranteed; (3) YouTube BrandConnect spend paid with credits provided as added value herein; (4) any operating fee, country specific fee, surcharge, or any other similar fee or cost, as determined by Google; and (5) VAT and other applicable taxes.

- (g) **"Discount"** means the rate(s) listed in Exhibit B.
- (h) **"Discount Period"** means the period beginning on the later of (i) the start of the Program Period and (ii) the Effective Date, and ending at the end of the Program Period.
- (i) **"Display Ads"** means any graphical or video ads (in .gif, .jpeg, .jpg, .png, .swf and other Flash formats, or such other formats) and audio ads (as Google may determine and may notify Customer from time to time), that are made available by Google or its Affiliates on GDA, YouTube, or Display & Video 360, and that are in each case targeted to the Territory or any part thereof. Display Ads do not include: (i) text ads (including any related images), other than text ads that are: (A) Responsive Display Ads, (B) Smart Display Campaigns or (C) App Campaigns; (ii) print ads; (iii) Google Ads local business ads; (iv) ads purchased via Authorized Buyers or such other advertising exchange that may be offered by Google or its Affiliates from time to time, except where purchased using Display & Video 360; or (v) ads that do not target the Territory or any part thereof. If Google introduces ads formats or ads product offerings (as determined by Google) during the Program Period, Google will decide in its sole discretion whether and how spend on such formats and products counts for the purposes of this Addendum.
- (j) **"Display & Video 360"** means the demand side platform currently known as "Google Display & Video 360" that is operated by Google or a Google Affiliate.
- (k) **"Display & Video 360 Spend"** means the total amount reflected in Google's financial reporting systems for fees paid or payable by Advertiser, Customer and/or Participating Company on behalf of Advertiser for Display Ads that are purchased using Display & Video 360 during the Program Period, but excluding platform and data fees.
- (l) **"Display & Video 360 Third Party Exchange Spend"** means that portion of Customer Ad Spend via Display & Video 360 that is for purchases of Display Ads from an ad exchange other than Authorized Buyers.
- (m) **"Effective Date"** means the date that the last party signs this Addendum.

- (n) **"Eligible Ads"** means standard reservation-based Display Ads on YouTube or GDA that target the Territory and are booked by Advertiser, Customer and/or Participating Company on behalf of Advertiser pursuant to an IO. Eligible Ads do not include any auction-based Display Ads or any ad purchased via Instant Reserve.
- (o) **"GDA"** means Google or partner properties within the Google display advertising network provided under the names "Google Display Ads" or "GDA" (formerly known as "Google Display Network" and "GDN").
- (p) **"Google"** means, collectively, each Google entity that signs below.
- (q) **"Instant Reserve"** means a reservation feature formerly known as "Advance Buy".
- (r) **"Milestone Date"** means one of the dates identified as such and detailed in Exhibit A.
- (s) **"Milestone Amount"** means any of the milestone amounts as detailed in Exhibit A.
- (t) **"Participating Company"** means any third party other than Customer that Advertiser retains for the purpose of purchasing Eligible Ads on behalf of Advertiser and that is recognized as such in Google's financial reporting systems.
- (u) **"Program Period"** means the period of time from the start date (Pacific Time) through the end date (Pacific Time) listed in Exhibit A.
- (v) **"Target Ad Spend"** means the aggregate Customer Ad Spend net of any discounts and as listed in Exhibit A.
- (w) **"Term"** means the period of time from the Effective Date through the earlier of (i) the end of the Added Value Use Period and (ii) the date on which this Addendum is terminated.
- (x) **"Tier"** means the tier associated with a particular Milestone Amount as detailed in Exhibit A.
- (y) **"Territory"** means any country or territory listed in Exhibit A.
- (z) **"YouTube"** means <http://www.youtube.com> and the version of the site optimized for mobile devices at [m.youtube.com](http://m.youtube.com) (including all mirror or derivative sites, and all replacements or successor versions thereof).

## 2. Upfront Spend.

- (a) In connection with Advertiser, Customer and/or Participating Company's purchase of Display Ads on behalf of Advertiser, Customer will make commercially reasonable efforts to meet or exceed the Target Ad Spend over the Program Period; provided, however, that neither Advertiser, Customer nor Participating Company will be considered in breach of this Addendum or otherwise liable to Google, nor will any penalty be imposed on any such party (e.g., any claw back or reimbursement for any previously given

Discount or used added value), should Customer Ad Spend not reach such Target Ad Spend or any Milestone Amount. Google's sole remedies, should Customer Ad Spend not reach the Target Ad Spend or any Milestone Amount in accordance with this Section 2(a), will be as set out in the remainder of Section 2.

- (b) If Customer Ad Spend is less than 90% of the relevant Tier 1 Milestone Amounts on the corresponding Milestone Dates, then with immediate effect on written notice to Customer (including by e-mail) Google's sole remedies will consist of, in its sole discretion, the right to: (i) terminate this Addendum; (ii) reduce or eliminate any unused added value referenced in this Addendum (if applicable); (iii) withhold any such unused added value pending Customer Ad Spend meeting at least 90% of the next Milestone Amount; or (iv) lower the Discount, in each case at any time on or after the relevant Milestone Date. If Google lowers the Discount pursuant to this subsection and Customer is not satisfied with the reduced discount level as determined by Google, then Customer may terminate this Addendum with immediate effect on written notice (including by e-mail) to Google.
- (c) Google will give consideration to various circumstances that may arise during the Term and that directly impact Customer's ability to achieve at least 90% of any Milestone Amount by the relevant Milestone Date, subject to any such consideration not restricting Google's rights under this Addendum.

### **3. Upfront Benefits.**

- (a) Advertiser, Customer and Participating Company will receive the Discount off of the standard market rate card in effect at the time of purchase for Eligible Ads during the Discount Period. The Discount will only apply to Eligible Ads served during the Discount Period. If applicable, the Discount may increase to a higher rate described in Exhibit B if the Customer Ad Spend meets an applicable Tier listed in Exhibit A on or before the applicable Milestone Date. Such higher rate (e.g., the "Tier 2" rate) can only be maintained if the Customer Ad Spend meets the applicable subsequent Milestone Amount detailed in Exhibit A. Due to the frequency of updates in Google's systems, any changes to the Discount under this Section will apply to IOs that are fully executed after 15 days of meeting the applicable Customer Ad Spend requirement.
- (b) Google is not required to amend any previously executed IO to apply the Discount and/or added value if any Discount or added value was not already applied in such previously executed IO.
- (c) Advertiser, Customer and/or a Participating Company will be entitled to apply only one discount agreement or arrangement that such party has with Google (or a Google Affiliate) on each IO entered into during the Discount Period, provided that: (i) nothing in this Addendum will prevent any such party from taking advantage of a different discount rate it might have pursuant to a separate agreement it might have with Google or a Google Affiliate; (ii) the Discount may not be combined with or applied to any discount or added value such party may be entitled to receive other than that set forth herein; (iii)



Advertiser, Customer and/or Participating Company will be entitled to elect and apply whichever discount or arrangement it chooses, in its sole discretion; and (iv) nothing in this Addendum will be construed to require such party to choose any particular discount or arrangement over another.

- (d) The currency or currencies are as listed in Exhibit A. If any currency conversion is required in connection with the calculation of Customer Ad Spend, such conversion will be made by using the daily average rate of exchange quoted by a reputable third party.
- (e) **Research and Measurement:** Google agrees to pay third parties to provide research studies to Customer (on behalf of Advertiser) during the Added Value Use Period (such amounts to be made available up to 15 days from any applicable Milestone Date listed in Exhibit C). Such studies may include post-campaign reporting and analytics. Any research will not require any integration with any Google product or service and will not require any new Google product or service feature that is not already generally available to the public. The total value (as determined by Google in its sole discretion) of such research studies, including any taxes where applicable, will not exceed the amount listed in Exhibit C. Neither party is responsible for the content or delivery of such research studies. Such research studies are mutually agreed to between the parties and subject to additional terms and conditions (e.g., a separate research agreement, a minimum number of impressions or minimum ad spend for campaigns being used in connection with any such study, etc.). All related purchase orders for the research studies must be submitted within 1 month after the end of the Program Period and the applicable invoices must be submitted to Google no later than the end of the Term. Google is not responsible for paying invoices received after the end of the Term. For funds that are unallocated in Google's financial reporting systems, the parties may mutually agree to reassign such unallocated funds to (i) another form of added value, except no such reallocation is allowed after the end of the Program Period, or (ii) another country and/or a Customer or Advertiser Affiliate (as appropriate), except that no reallocations are allowed following 1 month after the end of the Program Period.
- (f) **Third Party Digital Production:** If requested by Customer, Google agrees to pay an amount not to exceed, inclusive of any taxes where applicable, the amount listed in Exhibit C for Customer's (on behalf of the Advertiser) use of a vendor's digital production services provided during the Added Value Use Period (such amounts to be made available up to 15 days from any applicable Milestone Date listed in Exhibit C). Prior to any such payment being made by Google, any such digital production services must be completed, will be subject to Google's prior approval (not be unreasonably withheld), and must meet any Google technical specifications and policies with respect to contests. All related purchase orders for production payments must be submitted within 1 month after the end of the Program Period and applicable invoices must be submitted to Google no later than the end of the Term. Google is not responsible for paying invoices received after the end of the Term. Google will not be responsible for the delivery, development or functionality of the results of any such vendor's services, and Customer acknowledges that any asset created from such production services will be considered an "Ad" and/or

"Creative" under the Terms and Conditions. There will be no monetary refund for any unused portion of such amount. For funds that are unallocated in Google's financial reporting systems, the parties may mutually agree to reassign such unallocated funds to (i) another form of added value, except no reallocation is allowed after the end of the Program Period, or (ii) another country or a Customer or Advertiser Affiliate (as appropriate), except that no reallocation is allowed following 1 month after the end of the Program Period.

(g) **Account Support:** Google agrees to pay Google approved (and in some cases, certified) third party vendor(s) to provide certain account services listed in Exhibit C during the Added Value Use Period to facilitate Customer's (on behalf of the Advertiser) purchase of Display Ads (such third party vendor(s) "**Customer Vendor**") (such amounts to be made available up to 15 days from any applicable Milestone Date listed in Exhibit C). Such Customer Vendor services may include but are not limited to account management, setup and optimization. Such services must be completed and are subject to Google's prior review and approval before payment can be made. The total amount payable by Google to the Customer Vendor, inclusive of any taxes where applicable, is listed in Exhibit C. As between Google and Customer, Customer is responsible for contracting with and managing Customer Vendor. Google will not be responsible for the delivery or results of Customer Vendor services. If Customer Vendor manages Customer accounts that process personal data of data subjects located in the European Economic Area, then Customer Vendor acts as the Customer's data processor and, consequently, Customer must have the applicable processor agreement in place with Customer Vendor to comply with Article 28(3) of the General Data Protection Regulation. There will be no monetary refund for any unused amounts. All related purchase orders for the services provided by Customer Vendor must be submitted within 1 month after the end of the Program Period and the applicable invoices must be submitted to Google no later than the end of the Term. Google is not responsible for paying invoices received after the end of the Term. For funds that are unallocated in Google's financial reporting systems, the parties may mutually agree to reassign such unallocated funds to (i) another form of added value, except no such reallocation is allowed after the end of the Program Period, or (ii) another country and/or a Customer or Advertiser Affiliate (as appropriate), except that no such reallocations are allowed following 1 month after the end of the Program Period.

(h) **Additional Added Value for Customer Ad Spend:** If applicable, additional added value related to Customer Ad Spend listed in Exhibit C will be made available to Customer (on behalf of the Advertiser) if Customer Ad Spend is at least the corresponding Milestones listed in Exhibit A by the applicable Milestone Date (to be made available up to 15 days from the applicable Milestone Date). For example only, if Tier 2 includes an additional \$10,000 of added value and Customer Ad Spend is at least the Tier 2 Milestone Amount for the applicable Milestone Date, then Customer (on behalf of the Advertiser) will receive that additional \$10,000 in added value. If Customer Ad Spend did not satisfy the condition to receive additional added value on a Milestone Date (i.e., the Customer Ad Spend was below the applicable Milestone Amount for a particular Tier level), but the

Customer Ad Spend was at least the Milestone Amount for a subsequent Milestone Date and Tier level (including Target Ad Spend Amount at the end of the Program Period), then Customer (on behalf of the Advertiser) will receive any additional added value and at the qualifying Tier for those prior Milestone Dates that Customer was not previously eligible for.

- (i) Certain added value may not be available in all territories or may be subject to additional terms and conditions.

- 4. Confidentiality; Press Releases.** No party to this Addendum will disclose this Addendum to any third party, except to Advertiser, a Participating Company, and such party's professional advisors under a strict duty of confidentiality, or as may be necessary to comply with law, rule or regulation. Neither party will refer to or identify the other or the Advertiser by name, logo or otherwise in any news release, public announcement, advertisement, or other form of publicity in relation to this Addendum without securing the prior written consent of the other party and/or Advertiser.
- 5. Change of Control.** If a party experiences a change of control and/or an acquisition and divestiture of companies or divisions relevant to this Addendum (for example, through a stock purchase or sale, merger, or other form of corporate transaction): (i) that party will give written notice to the other party within 30 days after such event; and (ii) the parties will engage in good faith discussions to resolve any issues related to such event and any impact it may have on participation in the Upfront Program. If the parties do not come to an agreement within 30 days from receipt of the relevant notice (or such other time period mutually agreed to by the parties, which may be confirmed by email), then either party may immediately terminate this Addendum.
- 6. Termination.** Either party may terminate this Addendum if the other party materially breaches any term or condition of the Upfront Agreements and fails to cure such breach within 30 calendar days after receiving written notice thereof. Section 4 and other sections that by their nature should survive expiration or termination of this Addendum will survive any expiration or termination of this Addendum. Either party may terminate this Addendum immediately as set forth in Section 2(b) or if the other party breaches Section 4. Termination of this Addendum will have no effect on any Discount available to Eligible Ads pursuant to IOs that are fully executed prior to the effective date of termination.


IN WITNESS WHEREOF, the parties have executed this Addendum by persons duly authorized as of the Effective Date.

**GOOGLE LLC**

DocuSigned by:  
By:   
6732450BFBA349A...

Print Name: Philipp Schindler

**CUSTOMER: J.R. Reingold & Associates**

Inc  
DocuSigned by:  
By:   
DE0AF721BE0B43B...

Print Name: Paula Miller



Title: Authorized signatory

Title: VP of Legal

Date: 12/14/2021

Date: 12/14/2021

*[Remainder of page intentionally left blank. Exhibits to follow on the next page.]*

**Exhibit A****Territory:** United States (Currency: USD)**Start date (US/Pacific):** Oct 1, 2021**End date (US/Pacific):** Sep 30, 2022**Milestones**

United States	Currency: USD		
		Tier 1	Tier 2
Total Ad Spend		25,000,000	50,000,000

United States	Currency: USD		
Milestone Date		Tier 1	Tier 2
Milestone 1: Dec 31, 2021		7,500,000	12,500,000
Milestone 2: Mar 31, 2022		10,000,000	20,000,000
Milestone 3: Jun 30, 2022		13,500,000	27,500,000
Deal end: Sep 30, 2022		25,000,000	50,000,000

**Exhibit B****Discounts**

Territory		Tier 1	Tier 2
United States		9%	12%

**Exhibit C****Added Value**

United States	Currency: USD		
Total Ad Spend			
Account Support - GMP Service Partners		Tier 1	Tier 2
Milestone 2: Mar 31, 2022		N/A	52,750
Third Party Digital Production		Tier 1	Tier 2
Milestone 1: Dec 31, 2021		170,000	N/A
Milestone 2: Mar 31, 2022		N/A	158,250